



**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[Redacted]
Personal information
[Redacted]
Personal information

DECISION
Case #: CWA - 202841

PRELIMINARY RECITALS

Pursuant to a petition filed on August 11, 2021, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support regarding Medical Assistance (MA), a hearing was held on November 11, 2021, by telephone. This hearing was rescheduled numerous times at petitioner’s request.

The issue for determination is whether the respondent correctly denied petitioner’s request for a supportive home care rate of pay of \$17.00/hour.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
Personal information
[Redacted]
[Redacted]

Petitioner's Representative:

[Redacted]
Personal information
[Redacted]
Personal information
[Redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [Redacted] *Personal information*
Bureau of Long-Term Support
PO Box 7851
Madison, WI 53707-7851

ADMINISTRATIVE LAW JUDGE:

Jason M. Grace
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # Personal information) is a resident of Dane County who participates in the IRIS program through her IRIS Consulting Agency.
2. Petitioner's diagnoses include blindness, connective tissue disorder, hypermobility arthralgia, peripheral nerve disorder, neuropathic pain, low back pain with right side sciatica, sensorineural hearing loss, asthma, anxiety, and major depression. These disorders manifest chronic pain, gait instability, and muscle weakness.
3. On or about September 9, 2021, the agency completed a Long Term Care Functional Screen (LTCFS) for the petitioner. The screener determined that the petitioner required hands on assistance with bathing and dressing and assistance with all other activities of daily living (ADL). She further requires assistance with all instrumental activities of daily living (IADLs) except for telephone usage. She requires overnight supervision to provide assistance getting out of bed and navigating her surroundings during an emergency.
4. Petitioner's Individual Support and Services Plan for July 1, 2021 – June 21, 2022 sets forth an IRIS budget of \$16,083.60, which is divided between transportation and supportive home care (SHC). Independent from the IRIS budget, she also receives personal care services.
5. The petitioner requested a supportive home care budget amendment seeking approval for a pay rate increase from \$15.00/hour to \$17.00/hour. The respondent denied the budget amendment on July 30, 2021, as "not considered usual or customary." The written denial notice further indicated that "[w]hile raises and rate increases are part of the economy, this request is not a typical increase nor is it justified." Respondent's Exhibit 1, B1-B2.
6. Petitioner timely appealed.

DISCUSSION

The IRIS program is a Medical Assistance (MA) home and community-based long term care waiver program authorized under §1915(c) of the Social Security Act. IRIS is an alternative to Family Care, Partnership, and PACE—all of which are managed care programs. The IRIS program, in contrast, is designed to allow participants to direct their own care and to hire and direct their own workers.

The IRIS waiver application most recently approved by the Centers for Medicare and Medicaid Services (CMS) is available on-line at <https://www.dhs.wisconsin.gov/iris/hcbw.pdf>. See Application for 1915(c) HCBS Waiver: WI.0484.R03.00 - Jan 01, 2021. State policies governing administration of the IRIS program are included in the IRIS Policy Manual (available at <http://www.dhs.wisconsin.gov/publications/P0/P00708.pdf>), IRIS Work Instructions (available at CWA-201234 3 <http://www.dhs.wisconsin.gov/publications/P0/P00708a.pdf>), and IRIS Service Definition Manual (available at <https://www.dhs.wisconsin.gov/publications/p00708b.pdf>).

Consistent with the terms of the approved waiver, every IRIS participant is assigned a budget which is generated based on information obtained during a screening of the participant's long-term care functional needs. Relevant program policy provides:

The individual budget calculation for IRIS is based upon characteristics, and long-term support needs as collected on the Long-term care Functional Screen (LTC FS). A profile of the individual is developed based upon this information and that profile will be used to determine the projected cost of services and supports for that individual if he or she were enrolled in Family Care. Only services that are included in the IRIS Waiver are included in this calculation. The prospective

participant will know this budget amount when deciding whether to participate in IRIS or another Long-term care Program.

IRIS Policy Manual, Sec. 5.3. With the assistance of an IRIS Consultant Agency (ICA), participants identify waiver allowable services that they need to meet their long term care outcomes. The cost of those services must typically fall within the budget estimate. *Id.* at 5.3A. Participants may however submit a budget amendment to the Department of Health Services with the assistance of their ICA. A budget amendment is "...a request made by the IRIS participant to increase the participant's budget to pay for an ongoing need not met within the current budget. Typical supports, services or goods requested through the BA process include additional Supportive Home Care, Respite, Daily Living Skills, Supported Employment, and other such services needed by an IRIS participant on an ongoing basis." *Id.* When the Department of Health Services denies a BA request, the participant may appeal the budget amount using the Medicaid fair hearing process. *Id.*

IRIS participants are given the choice to hire their own SHC workers or use an agency to provide those services. See, IRIS Policy Manual, Sec. 6.1A and 6.2. IRIS participants are responsible for negotiating "reasonable and customary rates" of pay with all providers, be it participant-hired workers or an agency. *Id.* While the IRIS consultants are not responsible to hire, recruit, or negotiate rates of pay with providers, it is their responsibility to ensure the IRIS participant has the tools, resources, and information to hire, train, and manage providers. *Id.* The IRIS consultants must also ensure that the participant compensate providers at "a usual and customary rate." *Id.*

In the present matter, petitioner pursued a BA to request an increase in the rate of pay for SHC from \$15.00 to \$17.00/hour. In its July 30, 2021, denial, the respondent indicated that the rate increase was "... not considered usual or customary." Respondent's Exhibit 1, B1-B2. It was further noted that "... [w]hile raises and rate increases are part of the economy, this request is not a typical increase nor is it justified." *Id.* It was not indicated what a typical increase would be.

To support what rate is usual and customary, the respondent's representative submitted job ads for caregivers offering rates of pay of \$13.00 to \$17.00/hour. See, Respondent's Exhibit 1, F1-F2. It was further noted that Indeed.com listed the rate of pay for an home health aide in Madison as \$14.44/hour. *Id.* However, the manner in which that source determined that rate is not set forth in the record. The respondent's representative also testified that the usual and customary rate paid to an agency for SHC in Dane County is \$25.00 to \$30.00/hour. It was conceded that it is typically more cost effective for the IRIS participant to hire their own workers than to use an agency.

Petitioner has chosen to hire her own SHC workers. She uses multiple individuals to cover her SHC needs. She indicated that one worker left for significantly more money but would have still been willing to cover a few hours if paid \$17.00/hour. She also indicated one worker quit for more money, two have indicated they could cover more hours if paid more, and another has requested a wage increase. She has recently hired a new SHC worker, but that individual has not started working yet as she is giving priority to her other job until petitioner is able to pay \$17.00/hour.

To further support her request for the \$17.00/hour rate, petitioner submitted current job ads from three agencies hiring in-home caregivers in or around Madison. See, Petitioner's Exhibit 1, pg 33 – 39. Those ads list rates of pay of \$13.00 to \$19.00/hour, \$15.00 to \$18.00/hour, and \$15.00 to \$18.00/hour, respectively. *Id.* One of those agencies was further offering bonuses of \$250.00 after 30 days, \$250.00 after 90 days, and \$1,000.00 after one year of employment. *Id.*

The \$17.00/hour rate is consistent with the evidence provided by petitioner as the usual and customary rate being offered in the area for in-home caregivers in the current economic climate, which involves

significant worker shortages, especially for caregivers, and notable increases in wages from even a year or two ago. It is also approximately \$8.00 to \$13.00/hour less than if she were to use an agency to meet her SHC needs. She has demonstrated that in her case the \$17.00/hour rate is needed to retain and hire appropriate SHC workers.

Based upon the above, as well as the entirety of the record before me, I find that the respondent has failed to establish that it correctly denied petitioner's budget amendment for the SHC rate of pay increase from \$15.00 to \$17.00. As such, this matter shall be remanded to the respondent.

CONCLUSIONS OF LAW

The respondent failed to establish that it correctly denied petitioner's budget amendment for a \$17.00/hour rate of pay for supportive care hours.

THEREFORE, it is ORDERED

That this matter is remanded to the respondent to take all administrative steps necessary to rescind the July 30, 2021, budget amendment denial of petitioner's request for an increase in hourly rate of pay for supportive home care hours from \$15.00 to \$17.00, and revise its records to reflect approval of that supportive home care wage rate request. These actions shall be completed within 10 days of the date of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5th Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

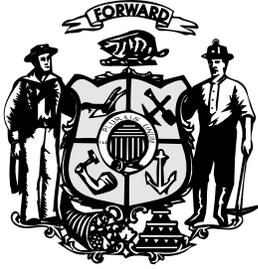
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 5th day of January, 2022



\s

Jason M. Grace
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 5, 2022.

Bureau of Long-Term Support

Personal information